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Docket No. 60130-2034;
04ARM0127REMARKS

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Claims 1-9 and 11-19 are presently pending in the application. Claims 1 and 6 are in independent form.

Independent claims 1-3, 5-6, 9, 11-12, 14-17, and 19 were rejected under §103 over Rutschmann in view of Peube in further view of Lawrence. Claim 4 was rejected under §103 over Rutschmann in view of Peube and Lawrence, and further in view of Matsumoto. Independent claim 6 was also rejected under §103 over Rutschmann in view of Peube in further view of Tadokoro. Claim 7 was rejected under §103 over Rutschmann in view of Peube and Tadokoro, and further in view of Yashiro. Claim 8 was rejected under §103 over Rutschmann in view of Peube and Lawrence, and further in view of Yashiro. Claims 13 and 18 were rejected under §103 over Rutschmann in view of Peube and Lawrence, and further in view of Tadokoro. Claim 9 was rejected under §103 over Rutschmann in view of Peube and Lawrence, and further in view of Douglas.

All of the Examiner's rejections to the independent claims (and their dependent claims) lack clarity. The Examiner merely provides a listing of elements for each reference and attempts to provide an argument to loosely tie the listing of elements together. Many of the Examiner's arguments are incoherent. The Examiner must provide a rejection for each of the claims including a motivation to combine the references for that claim. The Examiner cannot provide a prima facie case of obviousness for the claims without such an argument. Applicant cannot respond to the Examiner's Office Action in its current form.

For example, referring to the last seven lines on page 2 of the Office Action, the Examiner acknowledges that the base, Rutschmann, reference "fails to teach" every element of independent claim 1. How then can the Examiner rely on Rutschmann as the base reference to make a prima facie case of obviousness when it teaches none of the claimed elements?

Moreover, the Examiner argues that Lawrence provides an improved mounting configuration for the actuator. However, there is no apparent problem with the mounting of the actuator in Rutschmann. Lawrence provides no teaching that its actuator mounting configuration would be better than any other mounting configuration. The Examiner has nothing on which to base the stated motivation. There is no apparent benefit or motivation to modify the base reference.

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The Examiner argues that it would be obvious to further modify Rutschmann with Peube "to measure a physical quantity characteristic of the instantaneous flow rate of the gases to vary the energy loss of the gases flowing in the exhaust pipe." The Examiner does not establish that there is any need or benefit to vary the energy loss of gases in Rutschmann or Lawrence or that there is any problem that needs to be addressed.

Most importantly with respect to claim 9, the Examiner has failed to articulate a specific rejection. The Examiner appears to be making rejections without any reference to the specific claims presented. The Examiner must provide rejections on a claim-by-claim basis. Presently, the rejections are only a listing of elements.

The rejection of claim 6 has the same curious problem discussed above relative to claim 1. That is, the Examiner, on the last two lines of page 5 through the first nine lines of page 6, acknowledges that Rutschmann, which is the base reference, "fails to teach" every element of claim 6. What then is the purpose of Rutschmann? The Examiner again recites that one of ordinary skill would modify Rutschmann with Peube "to measure a physical quantity characteristic of the instantaneous flow rate of the gases to vary the energy loss of the gases flowing in the exhaust pipe." There is no motivation to modify Rutschmann with the teachings of Peube for the reasons set forth above relative to claim 1.

In another example, the Examiner states that Peube fails to teach a valve moveable between multiple positions at the bottom of page 6 after just having argued that Peube teaches a valve having multiple positions. It was impossible for the Applicant to reply to the Office Action as written.

The Examiner, on page 7, argues that it would be obvious to modify Rutschmann with Tadokoro "to provide stable connection between the actuator and valve." There is no problem with actuator mounting in Rutschmann. Further, there is no teaching that the arrangement in Tadokoro is better or would serve any benefit over the Rutschmann arrangement.

The same deficiencies exist with respect to the Examiner's rejections of the dependent claims. Applicant cannot possibly reply with any further detail unless a new, Non-Final Office Action is issued and the rejections are rewritten. Applicant cannot speculate at the arguments the Examiner is attempting to make.

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It is believed that this application is in condition for allowance. If any fees or extensions of time are required, please charge to Deposit Account No. 50-1482.

Respectfully Submitted,

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